



DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Legal Processes

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0046 Legal Processes. The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email:* InformationCollection@uspto.gov. Include “0651-0046 comment” in the subject line of the message.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Kyu Lee, Office of General Law, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-3000; or by

email at Kyu.Lee@uspto.gov with "0651-0046 comment" in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection covers information requirements related to civil actions and claims involving current and former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR part 104, which outlines procedures for service of process, demands for employee testimony and production of documents in legal proceedings, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. 2672) and the corresponding Department of Justice regulations (28 CFR part 14). The public may also petition the USPTO Office of General Counsel under 37 CFR 104.3 to waive or suspend these rules in extraordinary cases.

The procedures under 37 CFR part 104 ensure that service of process intended for current and former employees of the USPTO is handled properly. The USPTO will only accept service of process for an employee acting in an official capacity. This collection is necessary so that respondents or their representatives can serve a summons or complaint on the USPTO, demand employee testimony and documents related to a legal proceeding, or file a claim under the Federal Tort Claims Act. Respondents may also petition the USPTO to waive or suspend these rules for legal processes. This collection is also necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification. The USPTO covers current employees as respondents under this information collection even though their responses do not require approval under the Paperwork Reduction Act. In those instances where both current and

former employees may respond to the USPTO, the agency estimates that the number of respondents will be small.

There are no forms provided by the USPTO for this collection. For filing claims under the Federal Tort Claims Act, the public may use Standard Form 95 “Claim for Damage, Injury, or Death,” which is provided by the Department of Justice and approved by the Office of Management and Budget (OMB) under OMB Control Number 1105–0008.

II. Method of Collection

By mail or hand delivery to the USPTO.

III. Data

OMB Control Number: 0651-0046.

Forms:

- Standard Form 95 (Claim for Damage, Injury, or Death).

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent’s Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 309 respondents.

Estimated Number of Annual Responses: 309 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 5 minutes (0.08 hours) and 6 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 133 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$57,513.

Table 1: Total Burden Hours and Hourly Costs to Private Sector Respondents

Item No.	Item	Estimated Annual Respondents (a)	Responses per Respondent (b)	Estimated Annual Responses (a) X (b) = (c)	Estimated Time for Response (Hours) (d)	Estimated Burden (hour/year) (c) x (d) = (e)	Rate ¹ (\$/hour) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
1	Petition to Waive Rules	4	1	4	0.5 (30 minutes)	2	\$435	\$870
2	Service of Process	195	1	195	0.08 (5 minutes)	16	\$435	\$6,960
3	Forwarding Service	6	1	6	0.17 (10 minutes)	1	\$435	\$435
4	Employee Testimony and Production of Documents in Legal Proceedings	27	1	27	2	54	\$435	\$23,490
5	Forwarding Demands	8	1	8	0.17 (10 minutes)	1	\$435	\$435
	Totals	240	---	240	---	74	---	\$32,190

Table 2: Total Burden Hours and Hourly Costs to Individual and Household Respondents

Item No.	Item	Estimated Annual Respondents (a)	Responses per Respondent (b)	Estimated Annual Responses (a) X (b) = (c)	Estimated Time for Response (Hours) (d)	Estimated Burden (hour/year) (c) x (d) = (e)	Rate ² (\$/hour) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
1	Petition to Waive Rules	1	1	1	0.5 (30 minutes)	1	\$435	\$435
2	Service of Process	48	1	48	0.08 (5 minutes)	4	\$435	\$1,740
3	Forwarding Service	1	1	1	0.17 (10 minutes)	1	\$435	\$435
4	Employee Testimony and Production of Documents in Legal Proceedings	6	1	6	2	12	\$435	\$5,220
5	Forwarding Demands	2	1	2	0.17 (10 minutes)	1	\$435	\$435
6	Report of Unauthorized Testimony	1	1	1	0.5 (30 minutes)	1	\$435	\$435
7	Report of Possible Indemnification Cases	3	1	3	0.5 (30 minutes)	2	\$435	\$870
8	Employee Indemnification	1	1	1	0.5 (30 minutes)	1	\$92.50	\$93
9	Tort Claims	6	1	6	6	36	\$435	\$15,660

¹ 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F-27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is \$435 per hour. (<https://www.aipla.org/home/news-publications/economic-survey>).

² Ibid.

	Totals	69	---	69	---	59	---	\$25,323
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Estimated Total Annual Respondent Non-hourly Cost Burden: \$4,569.

There are no capital start-up, maintenance costs, or recordkeeping costs associated with this information collection. However, USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of filing fees and postage is \$4,569.

Filing Fees

This collection has filing fees associated with the petition to waive or suspend the legal process rules under 37 CFR 104.3. The USPTO estimates that approximately 5 petitions will be filed per year with a fee of \$130, for a total fee cost of \$650. There are no other fees associated with this information collection.

Postage Costs

The USPTO estimates that all submissions in this collection will be submitted by mail. The average first-class postage for a four-ounce mailed submission (for items other than a Service of Process) will be \$1.76 cents, resulting in a total of \$116.16 (\$1.76 x 66) for submissions other than a Service of Process. The USPTO estimates that the average postage for a Service of Process will be \$15.65 (Priority Mail flat-rate envelope by certified mail with return receipt), resulting in a total of \$3,802.95 (\$15.65 x 243) for Service of Process submissions. Therefore, the USPTO estimates the total postage cost for this collection is \$3,919.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- (b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected; and
- (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Acting Information Collections Officer,

Office of the Chief Administrative Officer,

United States Patent and Trademark Office.